U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17330553

Date: AUG. 5, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a dentist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion,[1] grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, regarding substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] *See also Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Petitioner earned a Bachelor of Dentistry degree in 1994 from the [redacted] in Brazil, with some specialization coursework in 2002 and 2007. Until he entered the United States in 2018, the Petitioner practiced dentistry in [redacted] Brazil.

Because the denial of the petition centered on the Petitioner's eligibility for the national interest waiver, our decision will focus primarily on that issue. But, first, there is an additional threshold issue that bears discussion.

A. Eligibility for the Underlying Classification

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The record, however, does not support that conclusion. The regulatory definition of "advanced degree" states, in pertinent part:

> A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. *If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.*

8 C.F.R. § 204.5(k)(2) (emphasis added).

The Petitioner submits several pieces of evidence indicating that a doctoral degree is customarily required in dentistry. These materials include printouts from Department of Labor resources O*NET and the *Occupational Outlook Handbook*, and an email message from the Florida Board of Dentistry, indicating that the Petitioner would need to submit "a diploma which is comparable to a D.D.S. or a D.M.D." (Doctor of Dental Surgery or Doctor of Medicine in Dentistry).

The Petitioner submits an evaluation of his Bachelor of Dentistry degree, but the evaluator does not indicate that the Petitioner's foreign degree is equivalent to a United States doctorate. Rather, the evaluator states: "a Dental Medicine Degree, followed by more than five years of full-time work experience in the field of Dental Medicine is equivalent to a Doctor of Dental Medicine [degree]." As shown above, the regulations do not permit for a lesser degree plus experience to be equivalent to a doctorate in professions that require a doctorate. The record does not establish that the Petitioner's foreign degree is equivalent to the doctorate customarily required by the specialty.

We therefore withdraw the Director's determination that the Petitioner has met his burden to establish that he qualifies as a member of the professions holding an advanced degree.

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

The Director concluded that the Petitioner established the substantial merit and national importance of his proposed endeavor, satisfying the first *Dhanasar* prong. This conclusion is questionable, but because we will dismiss the appeal for other reasons, we need not explore the issue in detail here.[3]

B. Well Positioned to Advance the Proposed Endeavor

To determine whether an individual is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals. *Id.* at 890.

The petition form, introductory letter, and "Professional Plan & Statement" submitted with the initial filing all indicate that the Petitioner seeks employment as a dentist in the United States. The Petitioner states that, owing to his education and experience, "he is well suited to advance the proposed endeavor to serve . . . as a Dentist in the U.S." The "Professional Plan & Statement," however, did not provide specific details beyond the general intention "to work with American dental clinics" and to work "in U.S. dental facilities."

The Petitioner's initial submission includes letters and certificates detailing his experience and involvement in various gatherings, all in Brazil. These materials have some weight, but do not address factors relating to the Petitioner's ability to work in the United States, including employer interest and the credentials necessary to practice in the United States.

In a request for evidence (RFE), the Director stated that the Petitioner had not provided enough information about his intended work in the United States. In his response, the Petitioner states: "I intend to validate my dentistry degree, and obtain my U.S. license in the field. This will allow me to serve as a Dentist and Oral Surgeon for any dental clinic or healthcare facility in need of my services." He also states that, while awaiting his license, he is "able to handle all administrative and strategic decisions that come with the operation of a dental clinic . . . (allowing other dental professionals in the field to shift their focus to the care and treatment of patients, rather than on office management)." Temporary employment in support positions neither warrants permanent immigration benefits nor advances the proposed endeavor as originally described.

As "Evidence that U.S. Businesses are Interested in Benefitting from [his] Experience," the Petitioner submits copies of messages from prospective employers at several different dental clinics. The messages indicate that the Petitioner had applied for, or at least inquired about, openings for a "General

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Dentist," a "Surgeon," an "Associate Dentist," and an "Experienced Dental Assistant." These messages date from May 2020, more than six months after the Petitioner filed the petition in October 2019, and are very preliminary, discussing, for instance, the Petitioner's availability for an interview or simply acknowledging receipt of an application or inquiry. The messages do not show that the Petitioner had even begun these inquiries until after the Director issued the RFE in March 2020. The Petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

Also in May 2020, the Petitioner contacted the Florida Board of Dentistry, asking how to "validate [his] diploma" from dental school. The Petitioner stated that he "also would like to know the steps to become [a dental] hygienist." When he filed the petition, the Petitioner did not indicate that he sought employment as a hygienist, assistant, or office administrator. Only after the Director issued an RFE did the Petitioner expand the scope of his proposed endeavor to include these functions, and actively seek employment in these supporting occupations. The record does not show that the Petitioner was qualified to practice as a dentist in the United States at the time he filed the petition, or that any U.S. employer seeks to employ him as a dentist. The latter issue is of particular significance because the Petitioner's waiver claim rests heavily on the assertion that demand for qualified dentists is acute and growing in the United States.

The Petitioner submits copies of two pay receipts. One shows that the Beneficiary worked 22 hours and 40 minutes for a dental practice in [redacted] Kansas in mid-June 2020. The record does not reveal the nature of this employment or explain why it apparently ended after less than a month.

The other pay receipt shows that the Petitioner worked 24 hours for a dental clinic in [redacted] Missouri in early July 2020. A letter from the clinic specifies that the Beneficiary works there as a "dental assistant," with the following responsibilities:

- Sterilize instruments according to regulations
- Assist the dentist through 4-handed dentistry
- Undertake lab tasks as instructed
- Provide oral hygiene and post-operative care instructions
- Keep the dental room clean and well-stocked
- Schedule appointments
- Maintain accurate patient records and assist with patient procedures

Evidence of employment as a dental assistant does not establish that, at the time of filing, the Petitioner was well positioned to work as a dentist in the United States. The post-RFE amendment of his "Professional Plan & Statement" to include other occupations does not remedy this deficiency. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The Petitioner's revised "Professional Plan & Statement" also refers to his "proposed endeavor in oral health research and education," but includes no specific plans in this regard. The Petitioner has not

submitted evidence to show even preliminary discussions with research institutions, nor has he established that he has the resources to fund and conduct his own research outside such an institution.

The Director determined that the Petitioner is not well positioned to advance the proposed endeavor. The Director stated that general assertions about the Petitioner's influence and future plans were not sufficiently substantiated to be persuasive. The Director also noted that "the petitioner is not a licensed dentist in the United States."

On appeal, the Petitioner asserts that his experience, training, and achievements "demonstrate[] his prior success" in dentistry and his qualifications to work in the field. The Petitioner also asserts that he is well positioned to advance the proposed endeavor because of his "technical expertise in a wide range of specialized areas of dentistry, coupled with his ability to train others in the field, promote good oral hygiene practices, and offer administrative and operational support to dental clinics and facilities." The Petitioner also states that "he is already undertaking the needed steps to be fully licensed to practice dentistry in the U.S."

The inquiries documented in the record do not show that the Petitioner was qualified to practice in the United States when he filed the petition. Rather, the record shows that, in May 2020, the Director responded to various job announcements for various positions in dentistry, and that, by July 2020, he was working as a dental assistant. The assertion that the Petitioner intends to take future steps to secure U.S. licensure as a dentist does not establish that he is well-positioned to advance the proposed endeavor described in the initial filing of the petition. The Petitioner's later revision that endeavor, to include a number of lower-level dentistry-related positions, does not resolve the deficiencies that led to the denial of the petition.

For the above reasons, the Petitioner has not established that he is well positioned to advance the proposed endeavor.

C. Balancing Factors to Determine Waiver's Benefit to the United States

The Petitioner's submits articles and reports about shortages of dentists in parts of the United States. In *Dhanasar*, we neither stated nor implied that worker shortages are a basis for granting the national interest waiver. Rather, we affirmed that labor certification is the means by which the government verifies that qualified workers are not available to fill a given position. *Id.* at 885. Also in *Dhanasar*, we acknowledged that there may be circumstances in which "it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification" (*id.* at 890), but this does not refer to circumstances in which a U.S. employer could apply for a labor certification but simply chooses not to do so. If an employer's reluctance to apply for labor certification were sufficient grounds for a national interest waiver, then labor certification would effectively cease to be a requirement as the statute specifies, and become, instead, an option that employers could disregard at their sole discretion.

Labor certification aside, the Petitioner contends that the shortage of dentists and the importance of proper dental care establishes that the national interest from his contributions is sufficiently urgent to justify granting the waiver. Whatever the *general* urgency arising from such a shortage, the Petitioner

has not established that a waiver of the job offer requirement would have a significant effect on that shortage.

The Petitioner states: "there would be no particular reason to require a labor certification process, considering the benefits that the Petitioner is generating, and will continue to generate, to U.S. organizations, oral health clinics, and individual Americans nationwide." In making this assertion, the Petitioner does not elaborate or cite specific supporting evidence to show the nationwide benefit that the Petitioner claims to already provide.

General information about the importance of dentistry does not establish eligibility, because there is no blanket national interest waiver for dentists. Members of the professions holding advanced degrees, including fully-credentialed dentists, are subject to the statutory job offer requirement, which includes labor certification. *Dhanasar* neither states nor implies that any occupation or profession is, or should be, or *can* be, exempted wholesale from that statutory requirement.

For the above reasons, the Petitioner has not established that, on balance, a waiver of the job offer requirement would be beneficial to the United States.

III. CONCLUSION

We agree with the Director that the Petitioner has not met the required second and third prongs of the *Dhanasar* analytical framework. As explained above, we also question the Director's determinations that the Petitioner (1) holds a degree equivalent to a U.S. doctorate, and (2) satisfied the elements of the first *Dhanasar* prong. Therefore, we conclude that he has not established eligibility for a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.